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AGREEMENT OF PARTIES

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Case: New Trail Capital, et al.
v. The Northwest Company, Inc.

16

Date: July 21, 2008

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REPORTER'S NOTE:
Since this deposition has been realtimed and is in
rough draft form, please be aware that there may
be a discrepancy regarding page and line number
when comparing the realtime screen, the rough
draft, rough draft disk, and the final transcript.

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Court Reporter's Name: SUSAN B. RATNER
Firm Name: REPORTERS CENTRAL

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - X
NEW TRAIL CAPITAL, a sole :
proprietorship, and MICHAEL BEER, :
Plaintiffs, :
-against- : 07 Civ. 9679
THE NORTHWEST COMPANY, INC., : (LAK)(RLE)
Defendant. :
- - - - - X
July 21, 2008
10:10 a.m.

Deposition of SHELDON SILVERBERG, taken by
Plaintiffs, held at the law offices of Silverberg
Stonehill Goldsmith & Haber, P.C., 111 West 40th
Street, New York, New York, before Susan B.
Ratner, a Shorthand Reporter and Notary Public
within and for the State of New York.

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A P P E A R A N C E S:

BLANK ROME LLP

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Attorneys for Plaintiffs

The Chrysler Building
405 Lexington Avenue
New York, New York 10174

BY: DAVID D. JENSEN, ESQ.

MOSES & SINGER LLP

Attorneys for Defendant

405 Lexington Avenue
New York, New York 10174

BY: PHILIPPE ZIMMERMAN, ESQ.

SILVERBERG STONEHILL GOLDSMITH & HABER, P.C.,

For the witness

111 West 40th Street
New York, New York 10018

BY: KENNETH R. SCHACHTER, ESQ.

ALSO PRESENT:

SHIRA AUERBACH

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IT IS HEREBY STIPULATED AND AGREED

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by and between the attorneys for the respective parties hereto that the filing and sealing of the within deposition shall be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed and sworn to before any officer authorized to administer an oath with the same force and effect as if signed and sworn to before the Court.

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1 Sheldon Silverberg - Rough Draft
2 S H E L D O N S I L V E R B E R G, having been
3 first duly sworn, stating his business
4 address as Silverberg Stonehill Goldsmith &
5 Haber, P.C., 111 West 40th Street, New York
6 New York 10016, was examined and testified as
7 follows:
8 EXAMINATION BY
9 MR. JENSEN:
10 Q. Good morning, Mr. Silverberg.

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11 A. Good morning.

12 Q. My name is David Jensen. I represent
13 the plaintiffs in this case, Michael Beer and New
14 Trail Capital. I am taking your deposition today
15 in connection with my client's suit against The
16 Northwest Company.

17 I presume that you know this routine,
18 but I will go ahead and walk through the
19 formalities.

20 I will be asking you a series of
21 questions that you need to answer to the best of
22 your knowledge.

23 If you don't understand a question,
24 please tell me so.

25 Do you understand that?

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6

1 Sheldon Silverberg - Rough Draft

2 A. I do.

3 Q. During your deposition objections may be
4 posed by your attorney or, for that matter, by
5 Mr. Zimmerman in response to my questions.

6 For this reason, so that the court
7 reporter can accurately record your testimony, I
8 would ask that you please wait until the question
9 is finished before answering.

10 If your attorney makes an objection,
11 allow him to make the objection and then answer
12 the question, unless you are instructed otherwise.

13 Do you understand that as well?

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14 A. I do.

15 Q. Throughout this deposition I will be
16 referring to The Northwest Company probably as
17 "Northwest," and when I do so, I will be also
18 referring to the officers and directors and
19 employees of Northwest, including specifically,
20 without limitation, Shay Auerbach and Ross
21 Auerbach and Michael Busser.

22 Do you understand that as well?

23 A. Michael who?

24 Q. Busser.

25 I understand that he is the CFO of the

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7

1 Sheldon Silverberg - Rough Draft
2 company.

3 A. I don't know that name.

4 Q. For the record, Mr. Silverberg, could
5 you state your name?

6 A. Sheldon Silverberg.

7 Q. How old are you?

8 A. 79.

9 Q. Have you ever had your deposition taken
10 before?

11 A. Yes, I have.

12 Q. Can you tell us when that was?

13 A. The last time was about six months ago
14 or seven months ago.

15 Q. What did that deposition pertain to?

16 A. A medical malpractice case.

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- 17 Q. What is your current occupation?
- 18 A. I come into this office on a part-time
- 19 basis.
- 20 Q. To clarify, you are an attorney at this
- 21 office?
- 22 A. Yes, I am.
- 23 Q. "This office" is Silverberg Stonehill
- 24 Goldsmith & Haber, P.C.?
- 25 A. Yes, sir.

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8

- 1 Sheldon Silverberg - Rough Draft
- 2 Q. For convenience, I would like to refer
- 3 to Silverberg Stonehill Goldsmith & Haber as
- 4 "Silverberg Stonehill" for the remainder of the
- 5 deposition.
- 6 How long have you been with Silverberg
- 7 Stonehill?
- 8 A. Sense its inception on January 1, 1978.
- 9 Q. What is your role or position at
- 10 Silverberg Stonehill?
- 11 A. President.
- 12 Q. Does Silverberg Stonehill have partners?
- 13 A. It has other shareholders, yes.
- 14 Q. How much do you work now?
- 15 A. I come in four mornings a week, but I
- 16 don't do much work.
- 17 Q. Good for you.
- 18 Did you prepare for your deposition
- 19 today?

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20 A. Yes.

21 Q. In connection with that preparation, did
22 you review any documents?

23 A. When I received the subpoena, I briefly
24 glanced at the letter of intent and the retention
25 letter or the agreement of the plaintiffs in the

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9

1 Sheldon Silverberg - Rough Draft

2 case.

3 Q. Did you meet with your attorney to
4 prepare for the deposition?

5 A. Yes, I did.

6 Q. Did you speak with anyone from
7 Northwest?

8 A. No.

9 Q. Is there anyone else that you spoke
10 with?

11 A. Only the attorney in this room and my
12 son Jay.

13 Q. The attorney in this room being --

14 A. Ken and very briefly Michael Goldsmith.

15 Q. So you did not meet with Mr. Zimmerman?

16 A. No.

17 Q. Are you familiar with The Northwest
18 Company?

19 A. Yes, I am.

20 Q. How is it that you are familiar with
21 Northwest?

22 A. Northwest was a client of our office for

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23 many years.

24 Q. About how long, do you know?

25 A. At least for the length of time that --

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10

1 Sheldon Silverberg - Rough Draft

2 I am not sure when they were incorporated, but
3 shortly after their incorporation. It was many
4 years.

5 I don't remember if they were
6 incorporated at the time that we formed this firm.

7 Q. would you say prior to the year 2000?

8 A. Yes.

9 Q. Are you in charge of billing on matters
10 pertaining to The Northwest Company?

11 A. Only to the extent of any work that I
12 may have done.

13 Q. Is there an attorney at Silverberg
14 Stonehill who is the contact person for Northwest?

15 A. During the time that we were doing work
16 for them, I guess I was the one most frequently in
17 contact, but they were in contact with other
18 people here, too.

19 Q. who is it that you liaised with at
20 Northwest over the years?

21 A. Jay and Shay and Ross Auerbach and
22 occasionally some of their employees.

23 Q. Do you know the Auerbachs in any
24 capacity other than as affiliates of Northwest?

25 A. Shay Auerbach was my client long before

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11

1 Sheldon Silverberg - Rough Draft

2 Northwest went into business and probably for as
3 long as maybe 40 years.

4 Q. Do you know Michael Beer?

5 A. Yes, I do.

6 Q. How do you know Mr. Beer?

7 A. His father, who I met in 1978 or 1949,
8 is one of my closest friends.

9 I knew his father before he was born.

10 Q. So it would be accurate to say that you
11 have, effectively, known Mr. Beer his entire life?

12 A. Yes.

13 Q. Are you aware of Michael Beer's suit
14 against Northwest?

15 A. Yes.

16 Q. How did you become aware of it?

17 A. I think that the time he started the
18 suit a summons and complaint may have been sent
19 here.

20 MR. JENSEN: Off the record.

21 (Discussion off the record.)

22 (Silverberg Exhibit 1, three-page
23 document, the first page being a "Subpoena in
24 a Civil Case," dated 2/5/2008, to Silverberg
25 Stonehill Goldsmith & Haber, P.C., marked for

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12

1 Sheldon Silverberg - Rough Draft

2 identification, as of this date.)

3 MR. JENSEN: Back on the record.

4 BY MR. JENSEN:

5 Q. Mr. Silverberg, I am handing you a
6 document that we have marked as Silverberg Exhibit
7 1.

8 I would like you to take a look at that
9 and tell us if you recognize it.

10 A. Yes.

11 Q. What is it?

12 A. It's a subpoena to my firm to produce
13 documents.

14 Q. What is your knowledge of this subpoena?

15 A. I know that it was served and I know
16 that people in the office went about complying
17 with it.

18 Q. Did you assist in reviewing any
19 documents for privilege in connection with this
20 subpoena?

21 A. No.

22 Q. Are you aware that documents were
23 redacted and/or withheld as privileged?

24 A. I know that they were examined, but I
25 don't know if anything was withheld.

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13

1 Sheldon Silverberg - Rough Draft

2 MR. JENSEN: Would you mark this

3 document as Silverberg Exhibit 2, please.

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4 (Silverberg Exhibit 2, document
5 three-page bearing the heading "Response to
6 Subpoena dated February 5, 2008, Issued to
7 Silverberg Stonehill Goldsmith & Haber,
8 P.C.," marked for identification, as of this
9 date.)

10 BY MR. JENSEN:

11 Q. Mr. Silverberg, I am now handing you a
12 document that we have marked as Silverberg Exhibit
13 2.

14 I would like you to take a look at that
15 and tell us if you recognize it.

16 A. No, I have never seen this before.

17 MR. JENSEN: Would you mark this
18 document as Silverberg Exhibit 3, please.

19 (Silverberg Exhibit 3, one-page printout
20 of e-mail string, the top e-mail dated
21 July 26, 2006, to Shay Auerbach and others,
22 from Sheldon Silverberg, Bates stamped No.
23 NW 00856, marked for identification, ass of
24 this date.)

25 BY MR. JENSEN:

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1 Sheldon Silverberg - Rough Draft

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2 Q. Mr. Silverberg, I am now handing you a
3 document that we have marked as Silverberg Exhibit
4 3.

5 I would like you to take a look at that
6 and tell us if you recognize it.

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7 A. Yes, I do.

8 Q. Can you tell us what this document is?

9 A. It's an exchange of e-mails between Jay
10 Auerbach and me.

11 Q. Am I correct in concluding that you
12 would not be able to identify this as one of the
13 documents or as one of the specific documents that
14 is listed on this privilege log that has been
15 marked as Exhibit 2?

16 MR. ZIMMERMAN: Objection.

17 You can answer.

18 A. I don't understand the question.

19 Q. If we could look back at Exhibit 2 --

20 A. You are telling me that it's not on here
21 or it is on here?

22 MR. JENSEN: Off the record.

23 (Discussion off the record.)

24 (Silverberg Exhibit 4, four-page
25 memorandum on the stationery of Moses &

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15

1 Sheldon Silverberg - Rough Draft
2 Singer LLP, dated July 27, 2006, to Shay
3 Auerbach and Ross Auerbach, from Steven
4 Glaser, Bates stamped Nos. NW 00863 through
5 NW 00866, marked for identification, as of
6 this date.)

7 MR. JENSEN: Back on the record.

8 BY MR. JENSEN:

9 Q. Mr. Silverberg, if you could look at
Page 13

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10 Exhibit 2, this appears to be a list of documents;
11 is that correct?

12 A. Yes.

13 Q. Would you have any ability to identify
14 the document marked as Exhibit 4 as one of the
15 documents on that list?

16 MR. SCHACHTER: Objection.

17 A. Do you want me to go through each one
18 until I find this?

19 I don't understand what you want me to
20 do.

21 Q. I just want to know if you would know
22 whether or not any of the documents on that list
23 is that document.

24 A. No, I would not.

25 MR. JENSEN: Off the record.

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1 Sheldon Silverberg - Rough Draft

2 (Discussion off the record.)

3 MR. JENSEN: Back on the record.

4 Q. Mr. Silverberg, I am showing you a
5 document that has been marked as Exhibit 4.

6 I would like you to take a look at that
7 and tell us if you recognize it.

8 A. No, I don't.

9 Q. To your knowledge, have you ever seen
10 this document before?

11 A. I don't think so.

12 Q. Do you have any understanding as to
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13 whether or not Northwest has waived the
14 attorney-client privilege with regard to the
15 matters that are discussed in these documents that
16 we have marked as Exhibits 3 and 4?

17 A. Only to the extent of what I have heard
18 here today.

19 Q. Again, for the sake of keeping the
20 record complete, would I be correct in concluding
21 that you would not be able to identify from the
22 privilege log that has been marked as Exhibit 2,
23 what, if any, documents might pertain to the
24 matters disclosed in these Exhibits 3 and 4?

25 MR. ZIMMERMAN: Objection.

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1 Sheldon Silverberg - Rough Draft 17
2 A. Please repeat the question.
3 A. I don't understand the question.
4 Q. Looking at the document marked as
5 Exhibit 2, the privilege log, do you have any way
6 of knowing what matters are addressed in the
7 documents that are listed on that Exhibit 2?
8 A. Do I have any knowledge?
9 Say it again, please.
10 (Question read.)
11 MR. SCHACHTER: He is not asking you to
12 guess.
13 A. Some of the items that are listed here I
14 think that I saw originally, but I could not tell
15 you what is in each of them, no.

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16 Q. Does Exhibit 2 indicate what the nature
17 of any of the documents that are listed upon it --

18 MR. SCHACHTER: You know, we have
19 produced him here.

20 He is not here to describe documents.
21 There are documents.

22 He has never seen this document.

23 You are now asking him to interpret that
24 document for you.

25 We are not going to spend our time doing

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1 Sheldon Silverberg - Rough Draft 18

2 that. We are just not.

3 If you have questions about knowledge of
4 things, that is fine. He is not going to
5 describe his interpretation of documents he
6 has never seen mean.

7 MR. JENSEN: The only thing that I am
8 trying to establish is that we cannot
9 determine that off the privilege log.

10 MR. SCHACHTER: So what?

11 He has never seen the privilege log.

12 What is the relevance whether he knows
13 what is on the privilege log?

14 He has never seen it.

15 If you have a document that you want to
16 show to him, fine.

17 Q. Do you have any knowledge of whether
18 silverberg Stonehill has produced documents for

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19 which the attorney-client privilege has been
20 waived by Northwest?

21 A. I was told that we complied with the
22 subpoena and produced what we could or should
23 have.

24 Q. Do you have any knowledge of whether
25 subsequent to Silverberg Stonehill's production of

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1 Sheldon Silverberg - Rough Draft 19
2 documents, any subsequent production was made in
3 light of any waivers of the attorney-client
4 privilege that thereafter occurred?

5 A. No, I do not.

6 Q. Do you know about any proposed buyouts
7 or other equity transactions pertaining to
8 Northwest?

9 MR. ZIMMERMAN: Objection.

10 Do you have a time frame?

11 MR. JENSEN: Let's say since the year
12 2002.

13 A. I recall that there was some offer to
14 purchase a small part of the company.

15 Q. What do you recall about that offer?

16 A. I think that it was for 10 percent of
17 the company at a very fair price, and I don't know
18 if anything was ever done about it.

19 Q. Did this in any way pertain to the
20 company known as Susquehanna International Group?

21 A. No.

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22 I thought that you meant in addition to
23 that.

24 Q. Are you familiar with any transactions
25 or proposed transactions that would have involved

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1 Sheldon Silverberg - Rough Draft
2 Susquehanna International Group?

3 A. Do you mean the one that is the subject
4 of this litigation?

5 Q. Yes.

6 A. I certainly had a familiarity with that
7 one.

8 Q. For sake of convenience, can we agree to
9 refer to Susquehanna International Group as "SIG"?

10 A. If you would like.

11 Q. Was Michael Beer involved in this
12 transaction that was proposed or contemplated that
13 involved SIG?

14 A. Yes.

15 Q. What was his involvement?

16 A. He brought Susquehanna to Northwest.

17 MR. JENSEN: Off the record.

18 (Discussion off the record.)

19 MR. JENSEN: Back on the record.

20 Q. Who were the other parties involved in
21 this proposed or contemplated transaction with
22 SIG?

23 A. What do you mean by "parties"?

24 Q. Well, who, to your knowledge, was
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25 potentially a participant in this transaction?

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2 A. There was a buyer and a seller. There
3 were no other parties.

4 Q. who was the buyer?

5 A. Susquehanna or eventually they named
6 some subsidiary or newco.

7 Q. who was the seller?

8 A. The seller originally was supposed to be
9 Shay Auerbach and Ross Auerbach because the
10 initial letter of intent contemplated a purchase
11 of stock.

12 Q. How did you first learn of this proposed
13 contemplated transaction of SIG?

14 A. I don't remember.

15 Q. Do you recall when you first learned of
16 it?

17 A. When, no.

18 Q. Were you retained in connection with
19 this proposed or contemplated transaction?

20 A. Yes.

21 Not formally, but we started to help
22 with it.

23 Q. To clarify, were you retained, was
24 Silverberg Stonehill retained, were you both
25 retained?

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22

1 Sheldon Silverberg - Rough Draft

2 A. I don't think that there is any
3 difference.

4 Q. Do you know if there is a retainer
5 letter or some other written agreement that
6 pertains to that retention?

7 A. I doubt that there is.

8 Q. Can you tell us generally what work, if
9 any, you performed in connection with this
10 proposed transaction?

11 A. That I personally performed?

12 Q. Yes.

13 A. Initially, I had a number of discussions
14 over a period of time, and then there was a letter
15 of intent that was negotiated and signed, and then
16 very long after that there was a proposed asset
17 purchase agreement, which I attended one meeting
18 about.

19 Thereafter, I did very little.

20 Q. Besides the work that you did, was there
21 any other work that you know of that Silverberg
22 Stonehill performed in connection with the
23 transaction?

24 A. Yes.

25 My son Jay attended a meeting in which

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1 Sheldon Silverberg - Rough Draft

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2 the proposed asset purchase agreement was
3 discussed, and he took over the matter after that.

4 Then, he and Michael Goldsmith had some
5 discussions after that.

6 Q. Do you know what a "leveraged buyout"
7 is?

8 A. Yes.

9 Q. Would you describe this proposed
10 transaction as a "leveraged buyout"?

11 MR. ZIMMERMAN: Objection.

12 A. It seems to have turned out that way,
13 yes.

14 Q. How would you describe it as it was
15 originally contemplated?

16 A. It was originally contemplated that
17 Michael had a buyer who was capable of purchasing
18 my client's business on an all-cash basis, and he
19 did not have to borrow any money to do it and to
20 come in and make a deal.

21 Then there was an arrangement where
22 under the letter of intent they intended to buy
23 the stock, but reserve the right to change that,
24 which they finally did without discussion with us,
25 and the presentation of an asset purchase

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1 Sheldon Silverberg - Rough Draft
2 agreement.

24

3 Q. Have you performed work in connection
4 with similar transactions in the past?

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5 MR. ZIMMERMAN: Objection.

6 A. I have performed work in connection with
7 the sales of businesses, but no two of them are
8 alike.

9 Q. How did you arrive at your understanding
10 of the parameters of this proposed transaction?

11 A. By listening and reading.

12 Q. Let's break that up.

13 By listening to whom?

14 A. To discussions and participating in
15 them, and then by reading what was finally
16 prepared.

17 Q. Who was involved in the discussions that
18 you listened to and participated in, if you can
19 recall?

20 A. The clients, I guess, and on rare
21 occasions their accountant, and on rarer occasions
22 Michael.

23 Q. Who was their accountant?

24 A. I don't recall -- Ken Gould.

25 MR. ZIMMERMAN: I was just going to note

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1 Sheldon Silverberg - Rough Draft

2 for the record to ask the witness to be
3 sensitive to the attorney-client privilege as
4 he answers these questions.

5 THE WITNESS: I thought that you were
6 going to object.

7 MR. SCHACHTER: I will as is

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8 appropriate.

9 I just want you to be sensitive to it so
10 you don't volunteer information that might
11 constitute information that is protected by
12 the privilege in response to a question
13 which is not --

14 MR. SCHACHTER: I will jump in, too.

15 THE WITNESS: Somebody should jump in if
16 I am doing that.

17 Have I done it?

18 MR. ZIMMERMAN: No, you have not.

19 THE WITNESS: All right.

20 MR. ZIMMERMAN: I am just asking you to
21 be sensitive and not to volunteer information
22 that is not directly responsive.

23 Q. What, if any, work were you to perform
24 in connection with consummating this proposed
25 transaction?

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1 Sheldon Silverberg - Rough Draft

2 MR. ZIMMERMAN: Objection.

3 A. We were doing what we thought was
4 necessary to get a proper contract.

5 Q. To clarify, would that be, among other
6 things, reviewing contracts and proposed
7 contracts?

8 A. Yes.

9 Q. Did your work in connection with the
10 transaction include advising Northwest of

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11 potential ramifications of the transaction?

12 A. Yes.

13 MR. JENSEN: Would you mark this
14 document as Silverberg Exhibit 5, please.

15 (Silverberg Exhibit 5, three-page
16 document, the first page being a telecopier
17 cover sheet on the stationery of Silverberg
18 Stonehill & Goldsmith, P.C., dated December
19 29, 2005, to Martha J. Flanders, from Michael
20 Beer, Bates stamped Nos. SSGH 00751 through
21 SSGH 00753, marked for identification, as of
22 this date.)

23 BY MR. JENSEN:

24 Q. I am handing you a document that we have
25 marked as Exhibit 5.

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2 I would like you to take a look at that
3 and tell us if you recognize it, Mr. Silverberg.

4 MR. SCHACHTER: Is there a question?

5 MR. JENSEN: Yes.

6 Q. Do you recognize this document?

7 A. I now recognize it, yes, but I don't
8 recall writing it.

9 Q. Do you have any reason to think that you
10 did not write it?

11 A. No.

12 MR. JENSEN: Would you mark this
13 document as Silverberg Exhibit 6, please.

14 0721NEW.TXT
(Silverberg Exhibit 6, two-page printout
15 of e-mail string, the top e-mail dated
16 November 6, 2005, to Sheldon Silverberg, from
17 Michael Beer, Bates stamped Nos. SSGH 00430
18 and SSGH 00431, marked for identification, as
19 of this date.)

20 BY MR. JENSEN:

21 Q. I am now handing you a document that has
22 been marked as Silverberg Exhibit 6.

23 I would like you to take a look at this
24 document and tell us if you recognize it.

25 A. Yes.

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□

1 Sheldon Silverberg - Rough Draft 28
2 Q. Can you describe for us what this
3 document is?
4 A. It seems to be an e-mail of a discussion
5 of a letter of intent sent by Michael Beer to me.
6 Q. To your knowledge, does this e-mail
7 summarize the terms of this transaction as it was
8 original contemplated between the potential
9 parties to the transaction?
10 A. It seems to, but I don't recall all of
11 the numbers.
12 Q. If I could direct your attention
13 specifically to the second page of this document,
14 there is a line that begins with the number 3).
15 A. Yes.
16 Q. To your knowledge, was Ross Auerbach

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17 personally obligated on bank guarantees that
18 pertained to loans issued to or for the benefit of
19 Northwest?

20 A. I think that all of the guarantees had
21 not yet been released at that time.

22 Q. To clarify, at the time of this e-mail,
23 it was your understanding that all of his
24 guarantees had been released?

25 A. No, I don't think that they all had been

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1 Sheldon Silverberg - Rough Draft
2 released yet.

3 There were guarantees that had been
4 released, but I don't think that all of them had
5 been released.

6 Q. Do you have any knowledge of the terms
7 and conditions of the personal guarantees that not
8 been released?

9 A. I don't recall the exact details, but
10 personal guarantees and obligations to pay a debt.

11 I think that you are -- yes, that is
12 all.

13 Q. To clarify, when you say it's an
14 obligation to pay a debt, you would be referring
15 to a debt of Northwest?

16 A. Right.

17 Q. It is your understanding that in the
18 event Northwest could not pay its debts, Ross
19 Auerbach could have been held liable for amounts

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20 that had been distributed to him by Northwest?

21 MR. ZIMMERMAN: Objection.

22 MR. SCHACHTER: Objection.

23 A. I don't think that that is what that
24 refers to.

25 MR. JENSEN: Would you mark this

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□

30

1 Sheldon Silverberg - Rough Draft

2 document as Silverberg Exhibit 7, please.

3 (Silverberg Exhibit 7, seven-page letter
4 agreement dated January 5, 2006, to The
5 Northwest Company, Inc., Attention: Ross
6 Auerbach, Bates stamped Nos. SSGH 00058
7 through SSGH 00064, marked for
8 identification, as of this date.)

9 BY MR. JENSEN:

10 Q. Mr. Silverberg, I am now going to show
11 you a document that has been marked as Exhibit 7.

12 I would like you to take a look at this
13 document and tell us if you recognize it.

14 A. Yes, I do.

15 Q. What is this document?

16 A. It's a letter of intent to purchase the
17 shares of stock of The Northwest Company to the
18 extent of 80 percent.

19 Q. Are you aware of any terms or conditions
20 that were discussed between the parties pertaining
21 to this proposed transaction that contravened
22 anything that is set forth in this letter of

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23 intent?

24 MR. ZIMMERMAN: Objection.

25 A. You would have to be more specific.

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1 Sheldon Silverberg - Rough Draft

2 There is too much for me to answer a general
3 question.

4 Q. Mr. Silverberg, if I could refer you to
5 page 4 of this document, if you will look at the
6 second paragraph on this page, it starts with the
7 letter (i), just so that the record is clear, can
8 I ask you to read this sentence?

9 A. "The Buyer shall have obtained the
10 financing necessary to consummate the transactions
11 contemplated by this letter of intent."

12 Q. Do you recall any discussions that
13 occurred between the parties with regard to this
14 aspect of the transaction at the time that this
15 letter of intent was being consummated?

16 A. No, I don't recall.

17 Q. Does reviewing this portion of this
18 document refresh your recollection as to whether
19 or not it was originally contemplated that the
20 proposed transaction would not involve borrowing?

21 MR. SCHACHTER: Could you repeat the
22 question, please?

23 (Question read.)

24 A. The proposed transaction at the time of
25 the signing of the letter of intent contained this

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32

1 Sheldon Silverberg - Rough Draft

2 provision.

3 Q. Do you recall that earlier today you
4 testified that the transaction as originally
5 contemplated was not going to involve borrowing?

6 A. No.

7 Q. Do you recall whether Michael Beer
8 contributed to the content of this letter of
9 intent?

10 A. I don't know what you mean by that.

11 Q. Do you recall whether there were any
12 provisions or terms of this letter of intent that
13 Michael Beer either requested or made changes or
14 suggestions to?

15 A. I don't recall.

16 MR. SCHACHTER: In about five minutes we
17 need a five-minute break.

18 MR. JENSEN: Sure.

19 Off the record.

20 (Discussion off the record.)

21 MR. JENSEN: Back on the record.

22 Would you mark this document as
23 Silverberg Exhibit 8, please.

24 (Silverberg Exhibit 8, seven-page
25 document, the first page being printout of

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1 Sheldon Silverberg - Rough Draft
2 e-mail dated December 20, 2005, to Ross
3 Auerbach, from Peter Mansour, Bates stamped
4 Nos. SSGH 00444 through SSGH 00450, marked
5 for identification, as of this date.)

6 BY MR. JENSEN:

7 Q. Mr. Silverberg, I am now going to show
8 you a document marked as Exhibit 8.

9 I would ask you to take a look at that
10 briefly and tell us if you recognize it.

11 A. It's another copy of a letter of intent.

12 Q. To your knowledge, was this the final
13 letter of intent or was it a draft or discussion
14 version of that letter of intents?

15 A. I don't recall.

16 Q. I ask you to turn to the page bearing
17 the No. 4, and if you could look at paragraph 5,
18 which starts, "Expenses.," quickly read over that
19 paragraph, please.

20 A. Yes.

21 Q. Does this refresh your recollection as
22 to whether or not Michael Beer suggested language
23 or terms that were to be included in the letter of
24 intent?

25 A. No.

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1 Sheldon Silverberg - Rough Draft
2 Q. Let's turn back to the very beginning of
3 this document, which has been marked SSGH 00444.

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4 Do you know who Peter Mansour is?

5 A. He was my secretary.

6 Q. Looking at the caption to this message,
7 is this a message that was sent either by you or
8 on your behalf?

9 A. Yes.

10 Q. Can you identify the persons who
11 received this message?

12 A. The message was intended for Ross
13 Auerbach, with a copy to Michael Beer.

14 Q. Was Shay Auerbach also an intended
15 recipient?

16 A. Yes, Shay Auerbach.

17 Q. Turning back now to this page marked as
18 4, and again looking at this paragraph 5, do you
19 see towards the bottom there is some underlined
20 text?

21 A. On page 5?

22 Q. On page 4 in paragraph 5.

23 A. Yes.

24 Q. Do you see that it says, "...[Michael
25 Beer to fill in..."?

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1 Sheldon Silverberg - Rough Draft

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2 A. Yes.

3 Q. When you sent this document, what was
4 your understanding of the meaning of that phrase,
5 "Michael Beer to fill in"?

6 A. That Michael Beer would fill it in.

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7 MR. JENSEN: Let's go ahead and take a
8 break.

9 (Off the record).

10 (Short recess taken.)

11 MR. JENSEN: Back on the record.

12 would you mark this document as
13 Silverberg Exhibit 9, please.

14 (Silverberg Exhibit 9, one-page letter
15 agreement on the stationery of Silverberg
16 Stonehill & Goldsmith, P.C., dated December
17 22, 2005, to Shay Auerbach, from Sheldon
18 Silverberg, Bates stamped No. NW 00801,
19 marked for identification, as of this date.)

20 BY MR. JENSEN:

21 Q. Mr. Silverberg, we are handing you a
22 document that has been marked as Exhibit 9.

23 I would like you to take a look at that
24 document and tell us if you recognize it.

25 A. I do.

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1 Sheldon Silverberg - Rough Draft

2 Q. What is this?

3 A. It's a letter to Shay Auerbach at
4 Northwest asking for him and Ross to confirm that
5 they have no objection to our participation in the
6 finder's fee.

7 Q. Did you ever make an agreement with
8 Michael Beer for payment of part of his finder's
9 fee?

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10 A. At the time that Michael went into
11 business and I was offering him a couple of our
12 clients, I told him that we generally participate
13 in the finder's fee, and he said, "I will pay you
14 what anybody else pays you," and that was the only
15 agreement that we had.

16 Q. Is it your testimony, then, that there
17 was never any definite agreement that was reached
18 between you and Mr. Beer regarding what share of
19 his fee would be payable to you?

20 A. He said that he would pay me what
21 anybody else would pay me and that was the
22 understanding.

23 Q. What were other persons paying you?

24 A. In the past, our firm participated to
25 the extent of one-third to one-half of the

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□

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1 Sheldon Silverberg - Rough Draft
2 finder's fee.

3 Q. Did Mr. Beer ever offer any specific
4 amount of that finder's fee to you?

5 A. Yes, he did, down the line when the deal
6 looked like it may be consummated.

7 Q. What is it that he offered you?

8 A. He offered us 5 percent of the fee.

9 Q. What, if anything, was your response to
10 that offer?

11 A. I told him that we were not interested
12 and that we would not take any of it.

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13 MR. JENSEN: Would you mark this
14 document as Silverberg Exhibit 10, please.
15 (Silverberg Exhibit 10, blank-page
16 document, the first page being printout of
17 e-mail dated June 15, 2006, to Michelle
18 Mansour and others, from Martha J. Flanders,
19 Bates stamped Nos. SSGH 01297 through SSGH
20 01366, marked for identification, as of this
21 date.)
22 BY MR. JENSEN:
23 Q. Mr. Silverberg, I have handed you a
24 document marked as Exhibit 10.
25 I ask you to take a look over that and

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1 Sheldon Silverberg - Rough Draft 38
2 tell us if you recognize this document.
3 MR. SCHACHTER: Do you want him to go
4 through every single page of this?
5 MR. JENSEN: It would probably be a lot
6 easier to thumb through it.
7 I am not playing any games.
8 MR. SCHACHTER: I understand that.
9 A. What was question?
10 Q. Do you recognize this document?
11 A. It appears to be the proposed purchase
12 of asset agreement.
13 Q. If you look at the first page of this
14 document, the e-mail, do you see a paragraph that
15 starts, "From a tax efficiency stand point..."?
Page 34

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16 A. Yes.

17 Q. Did you or your firm ever do any work in
18 connection with the issue of whether or not a
19 seller would obtain rollover treatment for its 20
20 percent as discussed in this paragraph?

21 A. I know that I did not, but I don't
22 recall if anybody did.

23 Q. Again, do you see on the same page where
24 it says "Schematic"?

25 A. Yes.

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□

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1 Sheldon Silverberg - Rough Draft

2 Q. Below that, for the sake of clarity, can
3 you read that sentence that begins, "As you can
4 see..."?

5 A. Yes.

6 Q. Do you know if it was ever communicated
7 to Wolf Block or to SIG that Northwest did not
8 agree that the letter of intent permitted the
9 transaction to be structured as an asset purchase
10 rather than a stock purchase?

11 A. What was the first part of that
12 question?

13 Q. Do you know if it was ever communicated
14 to Wolf Block or SIG that the letter of intent did
15 not permit that?

16 A. I don't think that it was communicated
17 that the letter of intent did not permit it.

18 I think that it was communicated that
Page 35

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19 the letter of intent did not intend that.

20 Q. Turning two pages in, to a page that is
21 marked SSGH 01299, with regard to this document
22 and the pages that follow it in this exhibit, were
23 you involved in reviewing or drafting or
24 commenting upon this document?

25 MR. ZIMMERMAN: Objection.

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40

1 Sheldon Silverberg - Rough Draft

2 You can answer.

3 A. Only to the extent that I read it and
4 attended the first meeting.

5 Q. Would you turn to the page marked SSGH
6 01360.

7 MR. ZIMMERMAN: 1360?

8 MR. JENSEN: 1360.

9 MR. ZIMMERMAN: Thanks.

10 Q. If you could look over the portions of
11 this document that are captioned "Schedule 1.2(A)"
12 and "Schedule 1.2(B)," do you have any
13 recollection of any discussions that took place
14 between any of the parties to this proposed
15 transaction that concerned what liabilities would
16 be transferred in the transaction and what
17 liabilities would be retained by Northwest?

18 A. No, I do not.

19 Q. Do you know of any liabilities that were
20 not to be transferred in the transaction?

21 A. I don't recall.

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22 I don't recall that there were any not
23 to be transferred.

24 MR. JENSEN: Would you mark this
25 document as Silverberg Exhibit 11, please.

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1 Sheldon Silverberg - Rough Draft 41
2 (Silverberg Exhibit 11, two-page
3 printout of e-mail string, the top e-mail
4 dated June 19, 2006, to Sheldon Silverberg
5 and Peter Mansour, from Martha J. Flanders,
6 Bates stamped Nos. SSGH 00786 and SSGH 00787,
7 marked for identification, as of this date.)

8 BY MR. JENSEN:

9 Q. If you would take a look at this
10 document marked Exhibit 11, can you tell us if you
11 recognize it?

12 A. Only to the extent of what it appears to
13 be, but I don't recall it.

14 Q. Looking at the bottom of the first page
15 of this document, towards the bottom of the first
16 page of this document, do you see a message from
17 Peter Mansour on behalf of Sheldon Silverberg to
18 Martha J. Flanders?

19 A. Yes.

20 Q. Do you see where it says, "Our client
21 has instructed us to do no further work in this
22 matter"?

23 A. Yes.

24 Q. First of all, did there come a point in
Page 37

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25 time when you communicated to the other parties to

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1 Sheldon Silverberg - Rough Draft

2 this transaction that you had now been instructed
3 to resume work in the matter?

4 A. I am looking at this and it tells me
5 that we did.

6 MR. SCHACHTER: Would you repeat the
7 question, please.

8 (Question read.)

9 A. Resume work?

10 No, I don't recall.

11 Q. So is it your understanding, then, that
12 work was never resumed after June 19, 2006?

13 A. I don't recall the date on which we
14 finally did the work. I can't tell you that.

15 Q. To your knowledge, was work resumed at
16 some point after this message?

17 A. I don't know.

18 Q. Do you know if there was any other time
19 that you or someone acting on your behalf
20 communicated to the other parties that you would
21 you not be doing any further work on the matter?

22 A. I don't know.

23 Q. To your knowledge, who would know
24 whether or not work was resumed?

25 A. I would guess that the people who were

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1 Sheldon Silverberg - Rough Draft
2 then working on it were my son Jay and Michael
3 Goldsmith.

4 I don't know when they exactly stopped
5 and didn't do anything further.

6 Q. would they also have knowledge of
7 whether there were ever any other communications
8 made that there was to be no further work done on
9 the matter?

10 A. I don't know.

11 Q. who would know that?

12 A. Michael Goldsmith and my son Jay.

13 Q. Are you aware of any licensors that do
14 or did business with Northwest?

15 A. A great many of them -- Northwest had a
16 great many licenses.

17 Q. Can you name the licensors that you can
18 recall?

19 A. They had the International Football
20 League, Disney and every movie character that was
21 popular at the time; a list that endlessly went on
22 and on.

23 MR. JENSEN: would you mark this
24 document as Silverberg Exhibit 12, please.

25 (Silverberg Exhibit 12, three-page

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1 Sheldon Silverberg - Rough Draft

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2 memorandum on the stationery of Wolf Block,
3 dated July 10, 2006, to Sheldon Silverberg,
4 from Jill S. Linker, Bates stamped Nos. SSGH
5 00801 through SSGH 00803, marked for
6 identification, as of this date.)

7 BY MR. JENSEN:

8 Q. Would you take a look at this document
9 that we have marked as Exhibit 12 and would you
10 tell us if you recognize this document.

11 A. I don't recall it.

12 Q. Do you know if any license documents
13 were provided to Wolf Block or to SIG in
14 connection with this contemplated transaction?

15 A. I don't know.

16 Q. Do you know if there were ever any
17 discussions that took place with any of the
18 Northwest licenses regarding the contemplated
19 transaction?

20 A. I don't know.

21 Q. Are these matters that your son Jay and
22 Mr. Goldsmith would presumably know?

23 A. I don't think that Michael Goldsmith
24 would know, but my son Jay might be.

25 MR. JENSEN: Would you mark this

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□

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1 Sheldon Silverberg - Rough Draft
2 document as Silverberg Exhibit 13, please.
3 (Silverberg Exhibit 13, one-page
4 printout of e-mail string, the top e-mail

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5 dated September 20, 2006, to Michael Beer,
6 from Daniel Werther, Bates stamped No.
7 NTC0029, marked for identification, as of
8 this date.)

9 BY MR. JENSEN:

10 Q. would you take a look at this document
11 that has been marked as Silverberg Exhibit 13, and
12 would you tell us if you recognize any portion of
13 it.

14 A. All right.

15 Q. Do you see at the bottom portion of this
16 page there is a message from Stacy Karp to
17 Martha Flanders?

18 A. Yes.

19 Q. Do you have any recollection of this
20 portion of the message?

21 A. No.

22 MR. JENSEN: would you mark this
23 document as Silverberg Exhibit 14, please.

24 (Silverberg Exhibit 14, one-page letter
25 on the stationery of Silverberg Stonehill

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□

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1 Sheldon Silverberg - Rough Draft
2 Goldsmith & Haber, P.C., dated September 19,
3 2006, to Martha J. Flanders, from Jay
4 Silverberg, Bates stamped No. SSGH 00239,
5 marked for identification, as of this date.)

6 BY MR. JENSEN:

7 Q. If you would look at the document that

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8 has been marked as Exhibit 14, do you recognize
9 this document?

10 A. No.

11 Q. Is it your understanding that on
12 approximately September 19th of 2006 your firm
13 communicated that there had been no meeting of the
14 minds as to the proposed SIG transaction and that
15 your office was going to close its files?

16 A. I know what happened, but I don't recall
17 exactly when.

18 Q. But to clarify, you do recall that it
19 was communicated that there had been no meeting of
20 the minds and that the files were being closed?

21 A. I don't recall, but I know what
22 happened.

23 Q. Do you recall any conversations that
24 occurred with any of the parties to this
25 transaction regarding whether there had been a

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1 Sheldon Silverberg - Rough Draft
2 meeting of the minds?

3 A. I wasn't handling the matter during the
4 summer of that year.

5 I know a lot of work was being done to
6 try to resurrect the deal, but I wasn't involved
7 with it.

8 MR. JENSEN: Would you mark this
9 document as Silverberg Exhibit 15, please.

10 (Silverberg Exhibit 15, one-page letter

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11 on the stationery of Silverberg Stonehill
12 Goldsmith & Haber, P.C., dated November 15,
13 2006, to James T. Smith, from Michael B.
14 Goldsmith, Bates stamped No. SSGH NTC0036,
15 marked for identification, as of this date.)

16 BY MR. JENSEN:

17 Q. Would you take a look at this document
18 that has been marked as Exhibit 15, please.

19 A. All right.

20 Q. Looking at this document that has been
21 marked as Exhibit 15, do you recognize this
22 document?

23 A. No.

24 Q. If you could quickly read over this
25 document, do you have any knowledge of the matters

REPORTERS CENTRAL * (212) 594-3582

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1 Sheldon Silverberg - Rough Draft
2 that are expressed in this document?

3 MR. ZIMMERMAN: Objection.

4 A. What was the question?

5 (Question read.)

6 A. Yes, I do.

7 Q. Did you ever speak with Mr. Goldsmith
8 regarding this document?

9 A. No, I did not.

10 Q. What is it that you have knowledge of
11 regarding the document?

12 A. I have knowledge of the facts that are
13 recited in it, and why the deal was not

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14 consummated.

15 Q. Looking at the second paragraph of this,
16 which begins, "While it is not my intention...",
17 do you see the last sentence of that paragraph,
18 which reads, "Months later as the transaction
19 'evolved,' it became a highly leveraged asset sale
20 that raised serious questions by all sides
21 (including the prospective buyer) that Northwest
22 was selling into a fraudulent conveyance?

23 A. Yes.

24 Q. Do you have any knowledge of that
25 statement?

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1 Sheldon Silverberg - Rough Draft

2 A. I don't have any knowledge of the
3 statement as it appears in the letter, but I have
4 knowledge of the facts that led up to it, yes.

5 Q. What facts is it that you are aware of
6 that led up to that statement?

7 A. As a result of the sale and the high
8 interest loans that were going to be part of the
9 balance sheet and the service of the debt, that
10 the ongoing company would not be creditworthy of
11 enough credit to successfully continue its
12 operations, and that if it did not or could not,
13 the clients might have to refund the money that
14 they have already received.

15 Not refund, but turn it over.

16 Q. Do you know if the prospective buyer

0721NEW.TXT

- 17 ever raised that issue?
- 18 A. With whom?
- 19 Q. With anyone.
- 20 A. I don't know.
- 21 Q. Were you ever a party to any
- 22 communications in which the prospective buyer
- 23 raised that concern?
- 24 A. No.
- 25 Q. For what reason or reasons might the

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- 1 Sheldon Silverberg - Rough Draft
- 2 Auerbachs have had to turn over the amounts that
- 3 they had been paid?
- 4 MR. SCHACHTER: Are you asking him to
- 5 speculate?
- 6 MR. JENSEN: I am asking him what he
- 7 knows.
- 8 MR. SCHACHTER: Would you reread the
- 9 question.
- 10 (Question read.)
- 11 A. If their creditors were unpaid and this
- 12 was found to be a fraudulent conveyance.
- 13 Q. Do you know if there were ever any
- 14 concerns with provisions of the bankruptcy code,
- 15 such as the provisions pertaining to preferential
- 16 transfers and fraudulent transfers, if you know?
- 17 A. Repeat the question, please.
- 18 (Question read.)
- 19 A. I know that there was concern, yes.

0721NEW.TXT

20 Q. How is it that you know that there were
21 those concerns?

22 A. Because of the discussions that were
23 going on with Jay and Michael.

24 Q. Were you a participant in any of these
25 discussions?

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1 Sheldon Silverberg - Rough Draft

2 A. No.

3 Q. Besides Jay, was there anyone else in
4 Silverberg Stonehill who, to your knowledge, was a
5 participant in these discussions?

6 A. Yes, Michael Goldsmith, who signed this
7 letter.

8 MR. JENSEN: Would this be a good time
9 for another break?

10 MR. SCHACHTER: Sure.

11 MR. JENSEN: Off the record.

12 (Discussion off the record.)

13 (Short recess taken.)

14 MR. JENSEN: Back on the record.

15 BY MR. JENSEN:

16 Q. Can we go back to the document that was
17 marked as Exhibit 3?

18 A. All right.

19 Q. Looking at the bottom portion of this
20 message, do you recall receiving this message from
21 Mr. Auerbach?

22 A. No, I don't recall receiving it.

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23 Q. Looking up to the upper portion of the
24 message, do you recall a telephone conversation
25 that you had with, among other persons,

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1 Sheldon Silverberg - Rough Draft

2 Mr. Auerbach?

3 A. I recall a telephone conversation with
4 him on the subject. I don't recall when.

5 Q. Do you recall who else was involved in
6 that telephone conversation?

7 A. I don't think that anybody else was
8 involved in this telephone conversation with me.

9 MR. ZIMMERMAN: Do you want to clarify
10 whether or not it was just Shay Auerbach or
11 Ross Auerbach or --

12 MR. JENSEN: Let's do that.

13 Q. Which Auerbach or Auerbachs were on the
14 other end of that conversation?

15 A. I don't recall.

16 Q. Do you recall any conversations you had
17 with Shay Auerbach or with Ross Auerbach that
18 precipitated this message from Shay Auerbach?

19 A. Yes.

20 Q. What were those?

21 A. I recall a conversation that I had with
22 Shay Auerbach when he told me that his --

23 MR. SCHACHTER: I think that he is going
24 to say something.

25 MR. ZIMMERMAN: This, I presume, relates

0721NEW.TXT

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□

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1 Sheldon Silverberg - Rough Draft

2 to -- I should not assume anything.

3 MR. SCHACHTER: I have to tell you what
4 I think that it relates to, so you can decide
5 whether there is a privilege.

6 MR. ZIMMERMAN: That is fine.

7 Excuse us.

8 (At this time, Mr. Schachter and
9 Mr. Zimmerman left the deposition room to
10 confer and then returned.)

11 (At this time, Mr. Schachter and the
12 witness left the deposition room to confer
13 and then returned.)

14 Q. Do you need the question read back?

15 A. No.

16 I started to say that I recall a
17 conversation with Shay Auerbach in which he told
18 me, while doing his will, his tax attorney was
19 asked to read the proposed agreement, who then
20 told him that there is a fraudulent conveyance
21 question in this deal, and that he should not go
22 forward with it.

23 Q. Do you recall if Shay Auerbach used the
24 term "Fraudulent conveyance"?

25 A. I don't recall what term he used, but

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1 Sheldon Silverberg - Rough Draft

2 from what he said, that was what I understood it
3 to be, and it was an item that was under
4 consideration in our office at that time.

5 Q. Let me break this apart.

6 Do you know who the tax attorney is who
7 Mr. Auerbach had spoken with?

8 A. It was a partner in Moses & Singer.

9 Q. Do you know who that was?

10 A. No.

11 Q. Can you elaborate on the concerns in
12 your office on that point?

13 A. On that point, there was a discussion
14 going on between Jay Silverberg and Michael
15 Goldsmith on the thinly capitalized ongoing
16 company.

17 Q. Looking again back up to the top part of
18 this message, for what reason or reasons did you
19 send this reply?

20 A. To try to communicate to the client the
21 way that the deal could be salvaged.

22 Q. Do you see where it says, "...the only
23 protection would be..."

24 A. Yes.

25 Q. What were you attempting to protect

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1 Sheldon Silverberg - Rough Draft

2 against?

3 A. Fraudulent conveyance.

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4 Q. Was there anything else?

5 A. Not at that point, no.

6 There were a lot of other things
7 involved in the contract, but that was the point
8 that he had called to discuss.

9 Q. Reading on here, it says, "...the only
10 protection would be a significantly more
11 substantial initial capital infusion into the
12 acquiring company..."

13 Can you explain how that would have
14 protected against that risk?

15 A. If there were less borrowings put on the
16 book and more equity put in the company, this deal
17 would not have rendered the acquiring company
18 insolvent and unable to pay its bills.

19 Q. Continuing on, "...and a meaningful
20 indemnity from all of the Susquehanna Companies,
21 not just the acquiring company."

22 A. It would indemnify it against just such
23 a contingency, and by somebody other than the
24 acquiring shell, Susquehanna, the parent company,
25 they would have some protection.

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1 Sheldon Silverberg - Rough Draft

2 Q. Would either of these options have
3 eliminated that risk?

4 A. The indemnity would not have eliminated
5 the risk, but it would have taken the risk away
6 from the individuals in returning the money. It

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7 would place the burden on Susquehanna.

8 Depending upon how much of a meaningful
9 increase in the capital, if it was substantial
10 enough, it would eliminate the risk.

11 Q. Did you do any legal research before
12 sending this message?

13 A. Did I?

14 No.

15 Q. Did anyone from Silverberg Stonehill?

16 A. Well, Jay was handling the matter and he
17 was in the process of discussing it with Michael
18 Goldsmith when this question arose as a result of
19 an outside attorney.

20 Q. Do you know what legal research was
21 done?

22 A. I don't know if any legal research had
23 to be done. Michael Goldsmith is quite an expert
24 in that area.

25 Q. Did you consult with Mr. Goldsmith

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1 Sheldon Silverberg - Rough Draft
2 before you sent this message?

3 A. I did not, no, but my son Jay had.

4 Q. My next question is, did you consult
5 with Jay before you sent this message?

6 A. I don't recall, but I am reasonably sure
7 that I did.

8 Q. What was the basis for the advice that
9 you put forward in this message?

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10 A. Jay's discussion with Michael.

11 This was an ongoing discussion at the
12 time that our client was told by another attorney
13 about the problem with the deal.

14 Q. Do you know if Moses & Singer did any
15 research, legal research, in connection with these
16 matters?

17 A. I don't know.

18 Q. Can you describe what a "fraudulent
19 conveyance" is, to your knowledge?

20 A. This deal contemplated that the ongoing
21 company would be liable for all of the debts
22 incurred as a result of the financing in order to
23 make the deal happen, as a result of which it
24 would probably be rendered insolvent, and if
25 unable to pay its obligations, the transfer of the

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1 Sheldon Silverberg - Rough Draft
2 assets could be considered a fraudulent
3 conveyance.

4 MR. JENSEN: I think for the record that
5 I need to object that that was not
6 responsive.

7 Q. Can you provide a summary or a synopsis
8 of the legal elements leading to the conclusion
9 that something is a fraudulent conveyance?

10 A. I think that I just did.

11 Q. Did you ever reach the conclusion that
12 this proposed transaction was intended to defraud

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13 the creditors of Northwest?
14 A. Did I ever reach that conclusion?
15 No.
16 Q. Do you know if anyone from your firm
17 reached that conclusion?
18 A. I think that two of my partners did.
19 Q. Which partners reached that conclusion?
20 A. Michael Goldsmith and Jay Silverberg.
21 Q. Do you know if that conclusion was ever
22 put in writing?
23 A. To whom?
24 Q. To anyone.
25 A. It seems to be in writing right here

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1 Sheldon Silverberg - Rough Draft
2 (indicating).
3 Q. Besides this document, was it ever put
4 in writing?
5 A. I don't know.
6 Q. Do you know what creditors it was
7 concluded the transaction was intended to defraud?
8 A. I did not say that the transaction was
9 intended to defraud.
10 I said if the client became unable to
11 pay its debts, then that conclusion could possibly
12 be reached in the future, if it was rendered
13 insolvent by the transfer of these assets.
14 Q. Then let me see if I can clarify this.
15 Do you know if you or anyone from your

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16 firm ever reached the conclusion that this
17 proposed transaction was actually, as opposed to
18 implied in the law, intended to defraud the
19 creditors of Northwest?

20 A. Say that again.

21 Q. Let me break it apart here.

22 Did you or did anyone from your firm
23 reach the conclusion that this proposed
24 transaction was actually subjectively intended to
25 defraud the creditors of Northwest?

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1 Sheldon Silverberg - Rough Draft

2 A. I don't think so.

3 Q. Would it be fair to say that the intent
4 to defraud element would have been on the basis of
5 an intent that is presumed in the law rather than
6 an actual intent?

7 A. I think it's something that would have
8 developed in the course of future events, and I
9 don't think that there was an intent to defraud.
10 I think that it may have come about as a result of
11 the inability of this company to properly conduct
12 its business.

13 Q. Can you explain how the finding of a
14 fraudulent conveyance is impacted by whether or
15 not there is an actual versus a presumed intent to
16 defraud creditors?

17 A. I don't know the answer to that.

18 Q. Did you ever reach the conclusion or did
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19 anyone from your firm ever reach the conclusion
20 that the price being paid to Northwest in
21 connection with this proposed transaction was not
22 fair consideration?

23 A. I don't think that there was any problem
24 with the price. The price was not a problem.

25 Q. Do you know if any other lawyers or law

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1 Sheldon Silverberg - Rough Draft
2 firms reached any of these conclusions that we
3 have been talking about?

4 A. No, I don't know.

5 Q. Did you discuss intent to defraud or
6 fair consideration with any other lawyers or law
7 firms?

8 A. Did I?

9 No.

10 Q. Do you know if anyone at your firm did?

11 A. I don't know.

12 Q. Are you familiar with the publication
13 called "New York Jurisprudence 2d"?

14 A. Not really.

15 Q. Have you heard of it?

16 A. Yes.

17 MR. JENSEN: Would you mark this
18 document as Silverberg Exhibit 16, please.

19 (Silverberg Exhibit 16, four-page
20 excerpt from New York Jurisprudence 2d,
21 "Creditors' Rights and Remedies," marked for

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22 identification, as of this date.)

23 BY MR. JENSEN:

24 Q. Would you look over this exhibit that we
25 have marked as Exhibit 16.

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1 Sheldon Silverberg - Rough Draft 62

2 A. All right.

3 Q. First of all, what is your understanding
4 of the content of the publication New York
5 Jurisprudence 2d?

6 A. I don't have any real understanding of
7 it. I am not a research person.

8 Q. Do you understand it to be a treatise on
9 the topic of New York law?

10 A. I don't know what it is.

11 MR. ZIMMERMAN: I am going to object to
12 this whole line of questioning.

13 Obviously, you are welcome to do it, but
14 I will stipulate that New York Jurisprudence
15 2d is a treatise on New York law.

16 I think it's unfortunate to subject this
17 witness to a line of inquiry as to what a
18 research tool is or is not.

19 I am just noting that for the record.
20 You are free to continue.

21 Q. If we turn in this to the section --

22 MR. SCHACHTER: I am going to say
23 something else.

24 We are not here to test the witness'
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25 knowledge of fraudulent conveyances.

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□

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1 Sheldon Silverberg - Rough Draft

2 You can ask the witness what happened
3 factually, but you are not going to get his
4 opinion on the law.

5 You can ask him questions of fact, but
6 he is not here to give opinions.

7 MR. JENSEN: I will not be asking for
8 his opinion.

9 MR. SCHACHTER: All right.

10 Q. If you would look at section 366, in the
11 first paragraph, I am going to go ahead and read
12 tit into the record.

13 "Where a new corporation is formed for
14 the purpose of hindering, delaying, or defrauding
15 creditors, a transfer to it of the property of a
16 debtor is void as to such debtor's creditors.
17 Such a transfer may be fraudulent as to creditors
18 despite a lack of actual intent to cheat; however,
19 a transfer will not be set aside where the newly
20 organized corporation paid an adequate
21 consideration without any intent either to delay
22 or defraud creditors."

23 Do you know if the advice that was
24 transmitted in Exhibit 3 took account of the
25 statement of the law that I just read off of this

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□

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1 Sheldon Silverberg - Rough Draft

2 exhibit?

3 A. I don't know.

4 Q. Do you recall if you had other
5 communications with Ross or Shay Auerbach from
6 approximately the same time as the e-mail messages
7 that have been marked as Exhibit 3?

8 A. I don't recall.

9 Q. If we can go back to the document marked
10 as Exhibit 2, I recall that you said that you did
11 not recognize this document.

12 A. Yes.

13 Q. However, I would like to identify a few
14 specific entries on this document and simply ask
15 whether or not you recall any of the matters that
16 would have been discussed in those communications.

17 The first group that I would like to
18 identify are a series of communications numbered
19 29 through 40, dated July 26 and 25, 2006.

20 MR. JENSEN: Off the record.

21 (Discussion off the record.)

22 MR. JENSEN: Back on the record.

23 Q. Mr. Silverberg, with regard to this
24 e-mail that we have marked as Exhibit 3, do you
25 recall any other conversations that took place

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1 Sheldon Silverberg - Rough Draft

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2 with Ross and/or Shay Auerbach and you or anyone
3 from your firm at or about this same time period?

4 A. I don't recall, but I know that there
5 were a lot of open issues that were eventually put
6 into a memo by Jay Silverberg.

7 Q. Do you know if that memo was produced in
8 this litigation?

9 A. I don't know.

10 Q. Do you know what other issues were
11 addressed in that memo?

12 A. I don't recall.

13 Q. Would it be fair to say that the memo
14 addressed issues other than fraudulent conveyance?

15 A. It addressed issues other than the
16 fraudulent conveyance and all other issues that we
17 had with the proposed asset purchase agreement.

18 Q. Did anyone from Northwest ever express
19 to you that they had decided that they just did
20 not want to go through with the transaction?

21 A. I don't recall if it was expressed to me
22 or to Jay, but it was expressed and resulted in
23 the correspondence to Martha Flanders.

24 Q. When was this first expressed, do you
25 recall?

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1 Sheldon Silverberg - Rough Draft

2 A. I don't recall.

3 I know that you showed me a couple of
4 e-mails or letters that we sent indicating that

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5 there was no further work to be done.

6 Q. Do you recall if that was expressed
7 prior to the time of the e-mails that we have
8 marked as Exhibit 3?

9 A. The final one was sent long after that.

10 Q. For the purpose of making sure that our
11 record is as clear as it can be, if you would turn
12 back to this privilege log marked as Exhibit 2, I
13 want to clarify that you don't know what matters
14 were discussed in the items listed as Nos. 21
15 through 40, aside from the issues that we have
16 just discussed?

17 MR. SCHACHTER: Are you asking whether
18 he knows what was addressed in these e-mails?

19 MR. JENSEN: Aside from the fraudulent
20 conveyance point that we have been
21 discussing.

22 A. So far I see everything is dated July
23 25th.

24 were all of these e-mails on one day?
25 Here is July 26th.

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1 Sheldon Silverberg - Rough Draft

2 I don't know about anything else.

3 Q. On the next page, Nos. 56 and 57, is it
4 the same response, you don't know what else would
5 have been discussed?

6 A. It's also on the same day.

7 No, I don't recall.

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8 Q. The last one is No. 64.

9 A. No.

10 Q. Looking at this document, the e-mails
11 marked Exhibit 3, do you recall if you asked or
12 instructed Shay Auerbach to send you this message?

13 A. I don't recall ever asking him to send
14 me a message.

15 Q. Do you know if Jay Silverberg or
16 Mr. Goldsmith did?

17 A. I don't know, but I would doubt it.

18 Q. Had either Shay or Jay Auerbach raised
19 this issue of exposure to Ross and myself prior to
20 sending this e-mail?

21 MR. ZIMMERMAN: I think that the
22 question confused the names of the parties.

23 You might want to re-ask it.

24 MR. JENSEN: I think that you are right.

25 Q. Do you know if Ross or Shay Auerbach

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1 Sheldon Silverberg - Rough Draft

2 communicated with you regarding concern about
3 exposure to either of them prior to sending you
4 this message?

5 A. I don't recall the exact chronology of
6 events, no.

7 Q. Do you remember if this message was the
8 first notice or alert that you had received of
9 this issue?

10 A. I don't recall.

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11 Q. Do you know if you or anyone from your
12 office reviewed any of the New York debtor and
13 creditor law prior to sending this message of
14 July 26, 2006?

15 A. I don't know.

16 Q. To clarify your answer, you don't know
17 whether anyone reviewed that?

18 A. Yes.

19 MR. JENSEN: would you mark these
20 documents as Silverberg Exhibits 17 and 18,
21 please.

22 (Silverberg Exhibit 17, two-page
23 printout of e-mail string, the top e-mail
24 dated September 22, 2006, to David Pollard,
25 from Alberta Caron, Bates stamped No. MS

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1 Sheldon Silverberg - Rough Draft
2 0091, marked for identification, as of this
3 date.)

4 (Silverberg Exhibit 18, two-page
5 printout of e-mail string, the top e-mail
6 dated September 19, 2006, to Jay Silverberg,
7 from Ross Auerbach, Bates stamped Nos. SSGH
8 00244 and SSGH 00245, marked for
9 identification, as of this date.)

10 BY MR. JENSEN:

11 Q. would you take a look at the documents,
12 Mr. Silverberg, that have been marked as Exhibits
13 17 and 18.

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- 14 A. Yes.
- 15 Q. Do you recognize either or both of these
- 16 messages?
- 17 A. What was the question?
- 18 Q. Do you recognize either or both of these
- 19 messages?
- 20 A. No.
- 21 Q. Let's look at Exhibit 17, fax 1.
- 22 A. Yes.
- 23 Q. Do you see that there is a message from
- 24 Ross Auerbach to Daniel Werther?
- 25 A. Yes.

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- 1 Sheldon Silverberg - Rough Draft
- 2 Q. Do you see a portion of this message
- 3 that begins, "You are a super guy..."?
- 4 I will just read it.
- 5 A. I see it.
- 6 Q. "You are a super guy who has tried to
- 7 put a deal together with all the best intentions,
- 8 but we needed a deal that closes with all equity."
- 9 A. Yes, I see.
- 10 Q. First of all, do you have any
- 11 understanding of what the term "all equity" means?
- 12 A. No.
- 13 Q. Did you consult or discuss any of the
- 14 matters set forth in this message with Ross or
- 15 Shay Auerbach?
- 16 A. I don't think so.

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17 Q. To your knowledge, did these discussions
18 address whether or not the deal would be
19 acceptable if it was all equity?

20 MR. ZIMMERMAN: Objection.

21 A. I don't even know what that means.

22 Q. Do you have any idea why Ross did not
23 say, "We need an indemnity from Susquehanna," or
24 "We need more capital infused into the new
25 company"?

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1 Sheldon Silverberg - Rough Draft

2 MR. ZIMMERMAN: Objection.

3 Q. Do you have any idea why he did not say
4 that?

5 A. That discussion was happening at the
6 beginning of July.

7 I don't know what was happening in
8 September about that because, as far as I know,
9 the clients were dealing directly together without
10 us.

11 MR. JENSEN: Would you mark this
12 document as Silverberg Exhibit 19, please.

13 (Silverberg Exhibit 19, one-page
14 printout of e-mail dated August 15, 2006, to
15 Shay Auerbach, from Peter Mansour, Bates
16 stamped No. SSGH 00984, marked for
17 identification, as of this date.)

18 BY MR. JENSEN:

19 Q. Would you look at this document marked

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20 as Exhibit 19, Mr. Silverberg.
21 A. Yes.
22 Q. Do you recognize this?
23 A. I vaguely remember it, yes.
24 Q. Do you see the first sentence, where it
25 says, "We assume from your silence that

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1 Sheldon Silverberg - Rough Draft
2 negotiations have terminated"?
3 A. Yes.
4 Q. what negotiations were you referring to?
5 A. we had told Shay what he needed to make
6 this deal good, and to make every effort to
7 accomplish it, and he was continuing discussions
8 with the purchaser to try to achieve that.
9 we had not heard anything, I guess, for
10 a period of time, so I wrote this note to him.
11 Q. what needed to be negotiated that wasn't
12 already addressed in the letter of intent?
13 A. The infusion of equity or the
14 substantial indemnity that was required to make it
15 safe for our clients.
16 Q. was there anything else?
17 A. Oh, there were a whole bunch of things
18 in the contract, but that was between Jay and
19 Martha Flanders.
20 Q. who would know who matters were
21 continuing to be negotiated at the time of this
22 message?

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23 MR. ZIMMERMAN: Objection.

24 A. Jay would know what items were open on
25 his memo and Shay would know how he was getting

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1 Sheldon Silverberg - Rough Draft

2 along with Mr. Werther.

3 Q. Would Mr. Goldsmith also have that
4 knowledge?

5 A. Mr. Goldsmith may have that knowledge,
6 but I don't know.

7 Q. If we could go back to Exhibit 3 one
8 more time, this e-mail, did Ross or Shay Auerbach
9 ever communicate to you or, to your knowledge, to
10 the firm that the issue expressed in this e-mail
11 was not their sole concern?

12 A. With respect to consummating this
13 proposed transaction?

14 I don't know if they knew of the other
15 open items between the lawyers, so I can't tell
16 you because Jay was really handling the contract,
17 and he was in discussions with Shay, and Michael
18 was in discussions with Shay about the other
19 problems, so I don't know.

20 Q. But no one ever said that to you; is
21 that right?

22 A. That this was their sole concern?

23 Yes, nobody ever said that to me.

24 Q. That this was not their sole concern.

25 MR. ZIMMERMAN: Objection.

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1 Sheldon Silverberg - Rough Draft

2 A. Did they ever tell me that this was
3 their sole concern or that this was not their sole
4 concern?

5 Q. That this was not their sole concern;
6 that there were other concerns.

7 A. We had other concerns.
8 We, as attorneys, had other concerns
9 about the contract.

10 This was the main concern of the
11 clients.

12 Q. Can you describe what the other concerns
13 were?

14 A. No, I can't.

15 There was a memo that Jay was handling
16 with Martha Flanders.

17 Q. With regard to that memo from Jay, do
18 you know about what time that was written?

19 A. No, I don't.

20 Q. Do you know is it was approximately the
21 same time as this e-mail we have been discussing
22 that is marked as Exhibit 3?

23 A. I don't know.

24 MR. JENSEN: I think that that is all
25 that I have.

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1 Sheldon Silverberg - Rough Draft
2 THE WITNESS: Thank you.
3 MR. JENSEN: I appreciate your time,
4 Mr. Silverberg.
5 MR. SCHACHTER: Thank you.
6 MR. ZIMMERMAN: No questions.
7 MR. JENSEN: Off the record.
8 (Discussion off the record.)
9 (Time noted: 12:50 p.m.)

10

11

12 SHELDON SILVERBERG

13

14 subscribed and sworn to before me
15 this day of , 2008.

16

17

18 (Notary Public) My Commission Expires:

19

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1 Sheldon Silverberg - Rough Draft
2 C E R T I F I C A T E
3 STATE OF NEW YORK)
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4 : ss.

5 COUNTY OF NEW YORK)

6 I, SUSAN B. RATNER, a Shorthand Reporter
7 and a Notary Public within and for the State of
8 New York, do hereby certify that the foregoing
9 deposition of SHELDON SILVERBERG was taken before
10 me on the 21st day of July, 2008;

11 That the said witness was duly sworn before
12 the commencement of his testimony; that the said
13 testimony was taken stenographically by me and
14 then transcribed.

15 I further certify that I am not related
16 by blood or marriage to any of the parties to this
17 action or interested directly or indirectly in the
18 matter in controversy; nor am I in the employ of
19 any of the counsel in this action.

20 IN WITNESS WHEREOF, I have hereunto set
21 my hand this XXXXX day of July, 2008.

22

23

24 SUSAN B. RATNER

25

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1 Sheldon Silverberg - Rough Draft
2 July 21, 2008

3

4 I N D E X

5 WITNESS EXAMINATION BY PAGE

6 SHELDON SILVERBERG MR. JENSEN
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7
8 -----INFORMATION REQUESTS-----
9 DIRECTIONS (DI):
10 INSERT
11 RULINGS (RL):
12 REQUESTS (RQ):
13 CERTIFIED (CE):
14 MOTIONS (MO):
15
16 E X H I B I T S
17 SILVERBERG # FOR IDENT
18
19 1 - Three-page document, the first page being a
20 "subpoena in a civil case," dated 2/5/2008, to
21 silverberg Stonehill Goldsmith & Haber, P.C... 11
22
23
24
25

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1 Sheldon Silverberg - Rough Draft 78
2 2 - Document three-page bearing the heading
3 "Response to Subpoena dated February 5, 2008,
4 Issued to Silverberg Stonehill Goldsmith & Haber,
5 P.C.,"..... 13
6
7 3 - One-page printout of e-mail string, the top
8 e-mail dated July 26, 2006, to Shay Auerbach and
9 others, from Sheldon Silverberg, Bates stamped
Page 70

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10	No. NW 00856.....	13
11		
12	4 - Four-page memorandum on the stationery of	
13	Moses & Singer LLP, dated July 27, 2006, to Shay	
14	Auerbach and Ross Auerbach, from Steven Glaser,	
15	Bates stamped Nos. NW 00863 through NW 00866...	14
16		
17	5 - Three-page document, the first page being a	
18	telecopier cover sheet on the stationery of	
19	Silverberg Stonehill & Goldsmith, P.C., dated	
20	December 29, 2005, to Martha J. Flanders, from	
21	Michael Beer, Bates stamped Nos. SSGH 00751	
22	through SSGH 00753.....	26
23		
24		
25		

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1	Sheldon Silverberg - Rough Draft	79
2	6 - Two-page printout of e-mail string, the top	
3	e-mail dated November 6, 2005, to Sheldon	
4	Silverberg, from Michael Beer, Bates stamped Nos.	
5	SSGH 00430 and SSGH 00431.....	27
6		
7	7 - Seven-page letter agreement dated January 5,	
8	2006, to The Northwest Company, Inc., Attention:	
9	Ross Auerbach, Bates stamped Nos. SSGH 00058	
10	through SSGH 00064.....	30
11		
12	8 - Seven-page document, the first page being	

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13 printout of e-mail dated December 20, 2005, to
14 Ross Auerbach, from Peter Mansour, Bates stamped
15 Nos. SSGH 00444 through SSGH 00450..... 33
16
17 9 - One-page letter agreement on the stationery of
18 Silverberg Stonehill & Goldsmith, P.C., dated
19 December 22, 2005, to Shay Auerbach, from Sheldon
20 Silverberg, Bates stamped No. NW 00801..... 35
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1 Sheldon Silverberg - Rough Draft 80
2 10 - blank-page document, the first page being
3 printout of e-mail dated June 15, 2006, to
4 Michelle Mansour and others, from Martha J.
5 Flanders, Bates stamped Nos. SSGH 01297 through
6 SSGH 01366..... 38
7
8 11 - Two-page printout of e-mail string, the top
9 e-mail dated June 19, 2006, to Sheldon Silverberg
10 and Peter Mansour, from Martha J. Flanders, Bates
11 stamped Nos. SSGH 00786 and SSGH 00787..... 41
12
13 12 - Three-page memorandum on the stationery of
14 Wolf Block, dated July 10, 2006, to Sheldon
15 Silverberg, from Jill S. Linker, Bates stamped

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16 Nos. SSGH 00801 through SSGH 00803..... 44
 17
 18 13 - One-page printout of e-mail string, the top
 19 e-mail dated September 20, 2006, to Michael Beer,
 20 from Daniel Werther, Bates stamped
 21 No. NTC0029..... 46
 22
 23
 24
 25

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1 Sheldon Silverberg - Rough Draft 81
 2 14 - One-page letter on the stationery of
 3 Silverberg Stonehill Goldsmith & Haber, P.C.,
 4 dated September 19, 2006, to Martha J. Flanders,
 5 from Jay Silverberg, Bates stamped No.
 6 SSGH 00239..... 46
 7
 8 15 - One-page letter on the stationery of
 9 Silverberg Stonehill Goldsmith & Haber, P.C.,
 10 dated November 15, 2006, to James T. Smith, from
 11 Michael B. Goldsmith, Bates stamped No. SSGH
 12 NTC0036..... 48
 13
 14 16 - Four-page excerpt from New York Jurisprudence
 15 2d, "Creditors' Rights and Remedies"..... 52
 16
 17 17 - Two-page printout of e-mail string, the top
 18 e-mail dated September 22, 2006, to David Pollard,
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19 from Alberta Caron, Bates stamped No.
20 MS 0091..... 70
21
22 18 - Two-page printout of e-mail string, the top
23 e-mail dated September 19, 2006, to Jay
24 Silverberg, from Ross Auerbach, Bates stamped Nos.
25 SSGH 00244 and SSGH 00245..... 70

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1 Sheldon Silverberg - Rough Draft 82
2 19 - One-page printout of e-mail dated August 15,
3 2006, to Shay Auerbach, from Peter Mansour, Bates
4 stamped No. SSGH 00984..... 73
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